No. 43700-7-II

COURT OF APPEALS,
DIVISION II
OF THE STATE OF WASHINGTON

LIBBY HAINES-MARCHEL,

Appellant,

v.

WASHINGTON STATE DEPT. OF CORRECTIONS,

Respondent,

BRIEF OF APPELLANT

pm 2/25/13

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A. Assignments of error

Assignments of Error

1. The trial court erred and abused its discretion in denying plaintiff's motion for summary judgment when it ruled the documents requested were exempt from public disclosure pursuant to RCW 42.56.240 (1) and (2).
2. The trial court erred in denying plaintiff's motion for summary judgment when no genuine issue of fact in question existed.
3. The trial court erred in granting the defendants cross motion for summary judgment as a matter of law.

Issues Pertaining to Assignments of Error

The trial court abused its discretion when it did not review all affidavits and exhibits attached and filed in support of plaintiffs motion before making its ruling.

The trial court abused its discretion when it failed to make findings of facts in its decision that a genuine issue of fact existed in denying plaintiff's motion for summary judgment.

The trial court abused its discretion by applying an incorrect standard in granting the defendants cross motion for summary judgment as a matter of law.

B. Statement of the Case

On December 13, 2010, Mrs. Haines-Marchel went to Clallam Bay Corrections Center (CBCC) to visit her husband. She met with her husband in the visiting room. At 5:30 p.m., the visit ended. As she was exiting the facility, she was informed by staff that she would not be permitted to return the next day for the already approved Christian event.

As soon as the visit ended, her husband was placed on a dry cell watch. *See* CP 136. A dry cell watch is a procedure used to investigate the possible introduction of internally-concealed unauthorized material into the prison. *See* CP 105-106. The cell is located on the medical floor. Before an inmate is placed in the cell, a urine sample is obtained. The inmate is then strip searched and given minimal clothing before being placed in the cell. They stay there for at least three bowel movements or 10 days. If evidence of contraband is found, the offender is infracted. If no evidence is found, they are released to their unit. CP *Id.*

The day after being confined in the dry cell, Mr. Marchel was accused of introducing drugs into the institution. The staff told him that three different inmates had accused him of bringing the drugs into CBCC. *See* CP 136-137 #5-7. If Placement on a dry cell watch is the result of statement(s) by informant(s), the offender is entitled to know within one hour of this placement what was said by the informant(s), with any

identifying information redacted. *See* CP 106. This report was never provided to Mr. Marchel while he was in the dry cell. *See* CP 137 #10.

The following day, Mrs. Haines-Marchel contacted CBCC to find out what was wrong and why her visit was canceled. All she was informed about was Mr. Marchel's placement on the medical floor.

Mr. Marchel was released from dry cell on December 16, 2010. No further investigation was conducted because no evidence of wrongdoing by Mr. Marchel was discovered. *See* CP 137 #11.

On December 28, 2010, Mrs. Haines-Marchel emailed a PRA request to the Department of Corrections in Olympia. *See* CP 142 #15. On the same day, Mr. Marchel filed a grievance against the Department for the violation of the policy which requires a summary of the confidential information to be promptly provided to him. He also had not received paperwork on his UA or his release. *See* CP 116. In her request, Mrs. Haines-Marchel asked for all documentation pertaining to the placement of her husband in the dry cell. *See* CP 117. A response from DOC to Mrs. Haines-Marchel was mailed December 30, 2010. In this response, Denise Larson indicated that she expected to take 10 business days to respond with information about the documents. CP *Id.*

Mr. Marchel received a response to his grievance on January 3, 2011, stating he would be provided documents pertaining to his dry cell

placement. *See* CP 116. He received two pages of particular interest. The first was the Confidential Information Report with the numbers of three inmate informants redacted. The second was the Guide to the Evaluation of Reliability of informant Information with no apparent information redacted. *See* CP 118-119.

Mrs. Haines-Marchel then received a letter asking for payment for 43 pages. The Department then acknowledged receipt of payment and (43) pages were sent to Mrs. Haines-Marchel on January 21, 2011. *See* CP 120. Along with the records was an exemption log. *See* CP 121. The exemption log claimed statutory redactions for documents (1) and (2). In the log were definitions of claimed exemption and for pages (1) and (2), the references were to exemptions numbered 13 and 19. Number 13 pertains to informants and cites RCW 42.56.240 (1) and (2). Number 19 is related to specific intelligence information and cites RCW 42.56.240 (1). Document (1) was the Confidential Information Report. Document (2) was the Guide to the Evaluation of Reliability of Informant Information. The title was the only thing which was not redacted. *See* CP 125-126.

Mrs. Haines-Marchel then appealed the response. *See* CP 127-128. It was clear in her appeal that she was requesting the information because of the accusations that she had brought drugs into the institution. In her appeal, Mrs. Haines-Marchel claimed that the Confidential Information

Report and the Guide to the Evaluation of Reliability of Informant Information were not provided.

Mrs. Haines-Marchel contacted Barbara Parry, the Department's appeals officer, by email. In a response, she was informed by Mrs. Parry she would have a decision by April 5, 2011. *See* CP 129. Mrs. Parry, who handled appeals for the Department, denied the appeal claiming the documents were properly withheld from disclosure. *See* CP 134.

After the denial, on May 18, 2011, Mrs. Haines-Marchel questioned Mrs. Parry in the email whether or not all the documents had been provided. *See* CP 130. In her email response, dated May 19, 2011, Mrs. Parry informed Mrs. Haines-Marche that she had upheld the claimed exemption under RCW 42.56.240 (1) and (2) to redact documents (1) and (2). She did not respond to whether or not all documents were provided. The next day, Mrs. Haines-Marchel attempted to draw Mrs. Parry's attention to the fact that reports containing statements that were claimed to exist were not disclosed. She also admitted ignorance to what is in the file but that there seemed to be missing documents according to departmental procedures.

All Mrs. Parry did was to reiterate her upholding the exemptions claimed for documents (1) and (2). Mrs. Haines-Marchel was informed to make another request if she wished additional documents. Mrs. Parry also

informed her that by making the prior statement, this did not mean she had any knowledge that additional records exist. This lawsuit was then timely filed.

Briefs were filed with exhibits attached in support and the court considered verbal arguments by both parties on May11, 2012, pertaining to these issues.

However the court did not review all the exhibits in the court file and attached to plaintiff's motion. *See* CP 229.

The judge denied plaintiff's motion for summary judgment and granted defendants cross motion for summary judgment based on the declaration of William Paul. *See* CP 229-231 and CP 161-164.

The court's decision was based on the effective law enforcement prong. A notice of appeal was timely filed and received by the Court of Appeal on July11, 2012.

C. Argument

THE TRIAL COURT ERRED AND ABUSED ITS DESCRETION IN DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT WHEN IT RULED THE DOCUMENTS REQUESTED WERE EXEMPT FROM PUBLIC DISCLOSURE PURSUANT TO RCW 42.560.240 (1) AND (2).

> The trial court abused its discretion when it did not review all affidavits and exhibits attached and filed in support of plaintiff's motion before making its ruling.

The standard for an abuse of discretion can be found in, *Progressive Animal Welfare Society (PAWS) v. University of Washington*, 114 Wn.2d 677, 790 P. 2d 604 (1990), which states: " A trial court does not abuse its discretion unless the exercise of its discretion is manifestly unreasonable or based on untenable grounds or reasons". *PAWS* at 689. *See Also, In re Dependency of T.L.G.,* 139 Wn. App. 1, 156 P.3d 222 (2007) (A decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard or if the facts do not meet the requirements of the correct standard. 139 Wn. App. At 15-16).

In this public records act case the judge denied plaintiff's motion for summary judgment without reviewing plaintiff's material exhibits and affidavits in support of her motion rendering its decision manifestly unreasonable and outside the scope of acceptable choices. Without reviewing this evidence presented by the plaintiff the judge had only the defendant's assertions of William Paul's affidavit and not all the fact to apply the correct legal standard set forth in *PAWS*, supra, and *In re Dependency of T.L.G.*, in reaching its conclusion.

In Kunkel v. Meridian Oil Inc., 114 Wn.2d 896, 903, 792 P.2d 1254 (1990), our Supreme Court States: "We do not substitute our

judgment for that of the trial court but seek only to determine if substantial evidence supports the trial courts conclusion".

From the trial courts letter of opinion dated May 23, 2012, it's clear that the trial court didn't have the entire record before it nor reviewed the plaintiff's exhibits and affidavits which plaintiff urges this court to review in determining if the evidence supports the trial courts conclusion. *See* CP 229.

For a trial court to rule against a moving party without affording them the due process required to at least be heard on the facts which is required on a summary judgment should be a violation of due process under article I sec 3 of our Washington State Constitution when that evidence does not support the trial courts conclusion under law.

Evidence The Trial Court Didn't Review.

1. DOC document 05-392, which is afforded to inmates pursuant to DOC policy 420.311 (I) (B) setting forth a summary of Confidential Information relied upon for placement in a dry cell. *See* CP 106, CP 116, CP 118-119

2. Affidavit of Brock Marchel, that he was placed on dry cell watch because DOC accused plaintiff of giving him drugs. And that after he was found not concealing drugs, he was released and the investigation closed. CP 137 #8-11

3. Grievance filed by Mr. Marchel compelling DOC to release him for 05-392 confidential information report per policy. *See* CP 116

4. Affidavit of Libby Haines-Marchel being tolled DOC accuse her of introducing drugs into CBCC. Filing a public disclosure request. Receiving 43 responsive documents with two fully redacted that were the

same documents give to Mr. Marchel per DOC policy. *See* CP 118-119 and CP 125-126

If the trial court would've reviewed the above listed evidence before it, the trial court would have known (1) what DOC Policy allows an inmate to possess once placed on dry cell watch; (2) that the document allowed per policy has all the identifying information with the names redacted not placing the informants life in danger; and (3) that Summary of Information and Evaluation process in the assessment of its credibility of the Guide to The Evaluation form doesn't jeopardize the safety and security of the institution.

It simply attempts to verify (1) the policy and responsibility of the investigative staff; (2) the information to the inmate for his placement; (3) proves the reliability and credibility of the informant which William Paul based his decisions on: and (4) that in fact it was not a mistake to give the Confidential Information report 05-392 to the person place on dry cell watch.

Taking the above facts and applying them to the correct legal standard, it's clear that DOC policy when releasing the type of documents requested by plaintiff only calls for minimal redactions as set forth in *PAWS*, supra, which is what the plaintiff all along has requested. This

choice was closed due to the courts failure to review the exhibits and affidavits of plaintiff's motion.

The defendants are under the false assumption that plaintiffs argument is merely, since, these documents were given to Mr. Marchel, "they should automatically be given to plaintiff." *Sanders v. State*, 169 Wn.2d 827, 849-850, 240 P.3d 120 (2010), in support of their proposition.

As the court in *Sanders* clearly stated in its conclusion, "The Proper analysis is not if the documents in question were given erroneously, but, whether if plaintiff is entitled pursuant to the Public Disclosure Act or are they exempt under RCW 42.56.240 (1) and (2).

A false claim was made by a convicted felon against the plaintiff that she would attempt to introduce contraband into CBCC. Surely, the plaintiff has a right under the Public Records Act to know the process used to verify the information and that it is in accordance with their policies and procedures.

William Paul states in his affidavit he only completed one form 05-392 in this situation even though (3) confidential informants provided information. Mr. Paul clearly violated the policy governing the evaluation of informants he is required to follow when evaluating the information. He stated in his declaration that he is in charge of the intelligence and

investigations unit at CBCC. One would expect the head of the unit to follow policies governing his job. *See* CP 162 #6-7.

This demonstrates the need for the public to hold DOC officials accountable as RCW 42.56 States: "The purpose of the public Records Act is to preserve 'the most central tenets of representative government, namely, the sovereignty of the people and accountability to the people of the public officials and institutions." *O'Conner v. Dept. of Soc. and Health Services*, 143Wn.2d 895, 25 P.3d 426 (2001) (quoting *PAWS* 125 Wn.2d at 251).

The purpose in drafting of the public records act was to make our government open and accountable. The act itself in RCW 42.56.030 states: "The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created. This chapter shall be liberally construed and its exemptions narrowly construed to promote this public policy and to assure that the public interest will be fully protected. In the event of conflict between the provisions of this chapter and any other act, the provisions of this chapter shall govern.

Every time an agency claims an exemption, it erects barriers to the public's right to assert their sovereignty so clearly enumerated in this statutory scheme. To protect this right, the Supreme Court stated that "the Public Records Act 'is strongly worded mandate for broad disclosure of public records.'"*PAWS*, 125 Wn.2d at 251 (quoting *Hearst Corp.*, 90 Wn.2d at 127).

The Supreme Court in *PAWS* further emphasized the "agencies have a duty to provide 'the fullest assistance to inquirers and the most timely possible action on request for information." *Id.* at 252.

To give the plaintiff two documents fully redacted in blanket fashion does not satisfy DOC's duty to provide the fullest assistance in a timely manner enumerated in RCW 42.56.030 and *PAWS*, supra, 125 Wn.2d at 251. And it is abundantly clear that it's not for the agency to interpret the act: Leaving interpretation of the act to those at whom it was aimed would be the most direct course to its devitalization". *Hearst Corp.*, 90 Wn.2d at 131. There is no wiggle room for an agency it must fulfill its obligation under the PRA.

The plaintiff has a 'legitimate public interest' which outweighs DOC's concern that this document if released will assist an inmate in tailoring their information to be credible, deduce the identity of the informants, and jeopardize the safety and security of the institution.

In *Bainbridge Island Police Guild and Steven Cain v. The City of Puyallup A Municipal Corp.*, No. 82374-0, 82803 (2011), the court held, "The trial courts withholding of the entire PCIR and MIIIR unlawfully denied access to a matter of legitimate public concern an agency's response to allegation of sexual misconduct.

Although that case dealt with a claim of sexual misconduct and the case at bar deals with a claim against plaintiff of introducing contraband into CBCC, these cases are indistinguishable in the most telling aspect. In Bainbridge, the plaintiff requested documents to determine how and what criteria was used in the defendants decision not to charge the officer involved in sexual misconduct against her. The documents were released to the plaintiff because the court held, "The public has a legitimate public interest in how a police Dept. responds to and investigates an allegation against an officer."

The plaintiff has a 'legitimate public interest' in the nature of the allegation and how DOC responds to and investigates an allegation made by inmates when they are subsequently proven false.

Just as the plaintiff in Bainbridge did regarding how the defendants came to the conclusion that the officer was reliable in his statements, so does the plaintiff here have that interest and right to know how DOC

concluded that the inmate informants' information they acted on was determined to be reliable.

Plaintiff agrees their lack a legitimate interest in the names of the informants being released. However, the full entire redaction of the requested documents by DOC and the trial courts upholding that decision violates the PDA.

The plaintiff has a 'legitimate public interest' which out weights DOC's concern that this document if released will assist an inmate in tailoring their information to be credible. This assertion from the declaration of Mr. Paul which the court's opinion relied upon is based on a false assumption of (1) that the plaintiff is an inmate; or (2) that the plaintiff intends to send this document to an inmate; or (3) that the recipient could identify the informants by simply knowing the criteria DOC used to rate the reliability of convicted felons who made false accusations against the plaintiff.

Even if that was the case there are protections in CBCC's incoming mail room policy the Washington State Supreme Court ruled upon to prevent incoming documents otherwise subject to public disclosure. *Livingston v. Cedeno,* 164 Wn.2d 45, 186 P.3d 1055 (2008). *See Also* CP 120.

As stated above, plaintiff pursues these public dis-closable documents un-redacted with the exemption of the informants name(s) and number(s) redacted to ensure that DOC did not arbitrarily and without any justifiable reason accuse her of committing a felony based on convictedfelon's false and unreliable information.

The trial court's decision granting the defendants cross motion for summary judgment did the opposite of what's required by law.

THE TRIAL COURT ERRED IN DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGEMENT WHEN THEIR EXIST NO GENUINE ISSUE OF FACT IN QUESTION.

The trial court abused its discretion when it failed to make finding of facts in its decision that a genuine issue of fact existed in denying plaintiff's motion for summary judgment.

The moving party is entitled to Summary Judgment only if there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *Ames v. City of Fircrest,* 71 Wn. App. 284, 289, 857 P.2d 1083 (1993) (quoting *Building Industry Association of Washington v. McCarthy,* 218 P.3d 196, 152 Wash. App. 720 (Div.2 2009)).

This case was decided on Summary Judgment, the court of Appeals therefore examines whether disputed issues of material facts exist and whether the defendants were entitled to judgment as a matter of law. *Smith v. Okanogan County,* Wn. App. 7, 11, 994 P.2d 857 (2000).

All agency action challenged under the public records act is reviewed de novo by the Court of Appeals. *PAWS,* 125 Wn. 2d at 252. This Court of Appeals performs the same inquiry as the trial court but considers facts and reasonable inferences in the light most favorable to the nonmoving party.

The plaintiff bears the initial burden of showing the absence of an issue of material fact. *Ames*, 71 Wn. App. At 289-290. The trial court's decision denying plaintiff's motion for summary judgment should be reversed.

The following facts cannot be disputed.

1. Plaintiff has shown that DOC policy 420.311 (I) (B) exist and authorizes a summary of Confidential Information with redaction of the informants names. *See* CP 105.

2. Plaintiff has demonstrated DOC policy is set forth to hold accountability in how DOC handles their investigations and informs the inmates why decisions are made for their placement. *See* CP 106.

3. Plaintiff has shown inmate Brock Marchel was placed on dry cell watch because DOC believed plaintiff was going to introduce drugs through inmate Brock Marchel. *See* CP 141 #5-7 and CP 136-137 #5-7.

4. Plaintiff has shown that inmate Marchel was not given form 05-392 until he filed a grievance compelling DOC investigator Paul to hand over those documents according to that policy. *See* CP 116

5. Plaintiff has shown DOC is capable of withholding portions of form 05-392 that fall within a specific exemption without total redaction. *See* CP 118-119.

6. Plaintiff has shown the investigation closed once Mr. Marchel was released from dry cell watch and placed back into main population. *See* CP 137 #9-11.

7. Plaintiff's affidavit shows that she received (43) responsive documents with (2) documents redacted in blanket fashion; the same documents given to inmate Brock Marchel. *See* CP 125-126 and CP 118-119.

Plaintiff has shown through exhibits and affidavits attached to plaintiff's Motion for Summary Judgment that the trial court's opinion was an "abuse of discretion" to deny Summary Judgment to plaintiff. Had the trial court reviewed the attached exhibits and affidavits instead of relying on the assertions of William Paul's affidavit alone for its decision, the trial court more than likely would have ruled their exist no genuine issue of material fact in question.

As a matter of law, plaintiff has showed their exist a 'Legitimate Public Interest' in support of her argument that she is entitled to DOC form 05-392.

As a matter of law, plaintiff has shown that the only redaction that's "essential to effective law enforcement" is the informants' names.

The plaintiff has met the burden of showing the absence of a genuine issue of material fact, and the trial court should have granted Summary Judgment in favor of plaintiff.

THE TRIAL COURT ERRED IN GRANTING THE DEFENDANTS CROSS MOTION FOR SUMMARY JUDGMENT AS A MATTER OF LAW.

> The trial court abused its discretion by applying an incorrect standard in granting the defendants cross motion for Summary Judgment as a matter of law.

The moving party is entitled to Summary Judgment only if there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *Ames v. City of Fircrest,* 71 Wn. App. 284, 289, 857 P.2d 1083 (1993) (quoting *Building Industry Association of Washington v. McCarthy,* 218 P.3d 196, 152 Wash. App. 720 (Div. 2 2009)).

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The defendant in their cross motion bears the initial burden of showing the absence of an issue of material fact. *Ames* Wn. App. At 289-290.

The trial court's decision to grant defendants cross motion for Summary Judgment should be reversed. The defendants admit DOC policy 420.311 (I) (B) exist but claims 420.311 (I) (B) doesn't authorize 'Inmates' a summary of confidential information with the names of informants redacted once placed on dry cell watch or through any other means i.e., grievance procedure. *See* CP 105-106 and CP 162 #9.

DOC policy 420.311 (I) (B) clearly states: "An offender will be provided with a Summary of Confidential Information with all identifying information removed or blacked out while on dry cell watch."

Assuming, the defendants are correct that inmates are not allowed to possess this document according to the affidavit of William Paul. This

argument is still misplaced. First of all the plaintiff is not an inmate under the jurisdiction of the Dept. of Corrections.

Secondly, the plaintiff has no reason or motivation to manipulate or alter any confidential information regarding activity which would jeopardize the safety and security of the institution. *See* CP 141-142.

William Paul's affidavit claims that a blank form of the document requested in the hands of the public would pose a threat to the effective investigation and its security. The defendants base this assertion on the fact that the forms shows the criteria used to evaluate confidential information given by inmates and that inmates or the public potentially cold be able to tailor statements to prison investigators.

Once again this reasoning must fail. The defendants are attempting to confuse the issue by bundling a criterion that determines the reliability of information given by prison informants as if it pertains to plaintiff as justification for denial of documents otherwise afforded under the Public Records Act.

This claim, outside of the one small section on the first page, is absurd. According to the evaluation performed the information was supposed to be between completely reliable and usually reliable. However, checking the boxes clearly did not prevent Mr. Marchel from being dry celled for nothing and plaintiff being accused of committing a crime. The

Guide to the Evaluation of Reliability of Informant Information clearly didn't help William Paul in his declaration of three supposed informants.

Furthermore, this page provides no particularized information to identify informants, to repeat, absurd. Parts of the front page have areas which if filled in with specific details would possibly have information which is sensitive.

Mr. Paul, however, did not even provide information on motive, or make any other comments. Only three boxes were checked and the one section filled in with some information had the inmates numbers redacted. The department is fully capable of the minimal redaction necessary to protect the identity and safety of the informant provided to inmate Brock Marchel. *See* CP 118-119. *See Also PAWS,* supra, 125 Wn. 2d at 261; and *Sargent v. Seattle Police Dept.,* ___Wn. App___, 260 P.3d 1006 (2001).

The question thus turns upon the adequacy of DOC's showing whether the exemption applies in this particular case against plaintiff. *Id.* at 1014. Mrs. Haines-Marchel, does not dispute, namely aninmate informants identity information is not subject to disclosure. But only the blanket redaction that allegedly revealed the reasons of DOC's assessments and decisions based on those unsubstantiated allegations they found credible against plaintiff.

The Dept. of Corrections as did the SPD in *Sargent,* asserted the effective law enforcement prong of RCW 42.56.240 (1) for its redaction of information that allegedly revealed the reasons why decision were made based on the assessment of information given to them.

And DOC, like the SPD in *Sargent* contends disclosure of such information would provide a roadmap to undermine their criteria or how those decisions are made in the investigations.

However, the courts conclusion in *Sargent,* found that avoiding an opportunity for an accused to tailor his statement to his advantage is not a secret law enforcement technique.

Just as SPD failed to explain why this line of reasoning existed for withholding documents, so has, William Paul failed to show a factual basis in his declaration which the court based its decision granting Summary Judgment.

Mr. Paul's failure to show why the release of this document to plaintiff would divulge an investigative technique to the plaintiff on how to tailor information to DOC investigators when she is not under DOC authority is "very lacking". The Department has failed to make that showing.

It's Unfortunate that the Department favors blanket redactions. However, they have already been penalized for this in the past and one

would think that they would take the instructions from our courts more seriously. *See Prison Legal News, Inc. v. Dept. of Corrections,* 154 Wn.2d 628, 645-46, 115 P.3d 316 (2005).

It is clear from the above, and shown within the declaration of William Paul that there exist a genuine issue of fact in question in defendants cross motion for Summary Judgment which the trial court granted.

The plaintiff simply seeks to ensure government officials' acts do not go unchecked through the Public Disclosure Act's process when convicted felons under their supervision make false statements against public citizens.

For those reasons shown the trial court's decision should be reversed.

D. Conclusion

It is abundantly clear that the Department is not entitled to deference in its interpretation of the Act: "Leaving interpretation of the act to those at whom it was aimed would be the most direct course to its devitalization." *Hearst Corp.,* 90 Wn.2d at 131. There is no wiggle room for an agency – it must fulfill its obligation under the PRA. If there is any question regarding the scope of the request, the agency must seek clarification from the requester. At a minimum, because Mrs. Haines-

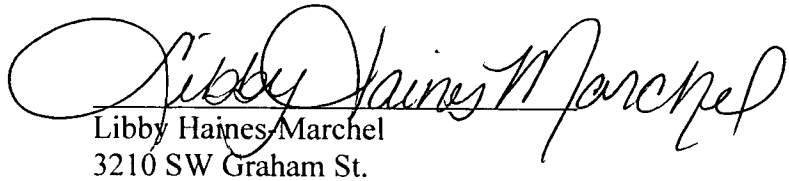
Marchel is entitled to minimally redacted documents and the Department failed to provide them, she should prevail in this appeal.

Mrs. Haines-Marchel Is Entitled To Reasonable Fees, Cost And The Statutory Penalties.

The purpose of the PRA's attorney fees provision "is to encourage broad disclosure and deter agencies from improperly denying access to public records." *Confederated Tribes of the Chehalis Reservationv.Johnson,* 135 Wn.2d 734, 757, 958 P.2d 260 (1998) (Citing *Lindberg v.Kitsap County*, 133, Wn.2d 729, 746, 948 P.2d 805 (1997)). The award of attorney fees is mandatory. *Amren v. City of Kalama,* 131 Wn.2d 25, 32, 929 P.2d 389 (1997). Fees and costs are mandatory for the period of time that disclosure was improperly denied from the time of request to disclosure. Because Mrs. Haines-Marchel is the prevailing party, she is entitled to all reasonable attorney fees, costs, and statutory penalties. *See Also* RCW 42.56.550 (4).

Therefore the trial court's decision should be reversed because it was an abuse of its discretion to deny plaintiffs motion for Summary Judgment and in granting the defendants motion for Summary Judgment. The plaintiff should be given the requested documents unredacted with the exception of the identifying names and DOC numbers of the informants.

Respectfully submitted this 25th day of February, 2013.



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COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

LIBBY HAINES-MARCHEL, Appellant, v. WASHINGTON STATE DEPARTMENT OF CORRECTIONS Respondent.	)	COA. 43700-7-II Declaration of Mailing (DCLRM)

I, LIBBY HAINES-MARCHEL, declare that on February 25, 2013 I deposited into the U.S. Mail, first class, postage prepaid a copy of Appellant Brief addressed to the COURT OF APPEALS, DIVISION II OF WASHINGTON STATE, 950 Broadway, Suite 300, Tacoma, WA 98402-4454.

I LIBBY HAINES-MARCHEL, declare that on February 25, 2013 I deposited into the U.S. Mail, first class, postage prepaid a copy of Appellant Brief addressed to: MIKOLAJ TYTUS TEMPSKI, OFFICE OF ATTORNEY GENERAL, PO BOX 40116, Olympia, WA 98504-0116.

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

February 25, 2013

LIBBY HAINES-MARCHEL